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Responding to Allegations of Subsidy Violations: Indonesia's Compliance under the Agreement on Subsidies and Countervailing Measures

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Abstract

Introduction to The Problem: Indonesia frequently finds itself confronted with allegations of subsidy infractions from European and Western counterparts. Thus, the focal point of this analysis revolves around the accusations leveled by the United States and the European Union against Indonesia for purported subsidy transgressions, along with an exploration of the strategic measures implemented by Indonesia to address and rectify these claims.
Purpose/Objective Study: This examination scrutinizes the contentions posited by both the United States and the European Union concerning subsidies and anti-dumping activities attributed to the Indonesian Government. Additionally, it delves into the remedial measures undertaken by the Indonesian Government in response to these allegations.
Design/Methodology/Approach: This study constitutes normative legal research, employing a case-centric methodology to scrutinize allegations of subsidy violations leveled against Indonesia by both the United States and the European Union. The analytical approach adopted involves employing descriptive analysis techniques to illuminate the intricacies of the legal landscape underpinning the accusations.
Findings: This scholarly analysis posits that, in response to accusations from the United States, Indonesia should actively pursue "sympathetic consideration" through the diplomatic avenue of bilateral dispute resolution, particularly concerning matters pertaining to the GATT's implementation. Furthermore, in the face of legal challenges from the European Union, Indonesia is compelled to furnish compelling evidence and articulate substantiated justifications grounded in the outcomes of its non-renewable natural resource assessments. This research discerns that Indonesia, positioned as a developing nation, is accorded protective measures under the auspices of Article 8.19 DSU, Article 12.11, Article 21.8, and Article 27.2. Specifically, Indonesia retains the legitimate authority to curtail nickel ore exports in accordance with the provisions delineated in the 1994 GATT. This prerogative is exercised to shield against and avert the depletion of Indonesia's natural resources, a concern underscored by Article 20 of the 1994 GATT, recognizing the potential for these resources to reach a state of extinction.
Paper Type: Research Article
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Volume 14, Issue 2, 2023, pp. 252-271

Introduction

Subsidies are commonly perceived as inequitable within the realm of international commerce due to their potential to disrupt equitable competition within market mechanisms, stifle the vitality of a competitive business environment, and ultimately undermine the integrity of equitable trade relations (Barutu, 2017). On a nuanced note, governmental utilization of subsidies is driven by the imperative of realizing socioeconomic policy objectives (Van den Bossche, 2021). Indonesia, as a developing country, is compelled to commit itself to the realization of this mission. This commitment is imperative as Indonesia is bound by the regulations of the World Trade Organization (WTO) (Purwaningsih, 2020).

The objective of Anti-Subsidy measures is to address instances of unfair competition stemming from the provision of subsidies by the exporting country's government, encompassing both domestic and export subsidies (Tempo, 2020). In 2020, a total of 385 cases were reported, originating from 10 major countries. Specifically, India accounted for 63 cases, the United States 42 cases, the European Union 43 cases, Australia 28 cases, Turkey 26 cases, Malaysia 23 cases, the Philippines 20 cases, South Africa 15 cases, Brazil 11 cases, and 114 cases from other nations (Direktorat Jenderal Perdagangan Luar Negeri, 2020). Throughout 2020, the Directorate of Trade Security of Indonesia handled a total of 101 cases, comprising 67 instances of trade remedy and 34 cases involving technical trade barriers. The trade remedy cases, processed in accordance with the WTO Agreement mechanism, included 37 cases of dumping accusations, 3 cases of subsidy allegations, and 29 cases of safeguards. Notably, 245 cases involving dumping, subsidies, and safeguards accusations remain unaddressed by the Indonesian government (Direktorat Jenderal Perdagangan Luar Negeri, 2020).

Notwithstanding the allegations leveled by the aforementioned nations, a compendium of subsidy-related imputations has surfaced within the jurisdiction of Indonesia, orchestrated by formidable geopolitical entities such as the United States and the European Union (Pertiwi, 2016). First, there emerged accusations pertaining to the subsidization of shrimp by the United States to Indonesia, instigating a dispute wherein the Gulf Shrimp Industries Coalition (COGSI) filed grievances against the Indonesian government, asserting an inequitable inundation of competitively priced US shrimp imports vis-à-vis the domestic US shrimp market (Simangunsong, 2022). Second, the imposition of a ban on nickel ore exports has engendered a perceptual discord within the European Union (Rozaq, 2023). Third, the United States has accused Indonesia of bestowing subsidies upon its palm oil biodiesel, prompting intentions to enact anti-dumping measures through the imposition of Anti-Dumping Import Duties on palm biodiesel originating from Indonesia (PASPI Research Team, 2018). Fourth, the subsidies disbursed by the Indonesian government for biodiesel production, particularly the subsidization of palm oil as an export commodity, has the potential to impede the domestic producers of the European Union (Purnamasari, 2021).

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Analysis of issues related to subsidies, anti-dumping, and safeguards has been previously undertaken by various researchers, yielding diverse findings. Firstly, a study by Amira (2021), delves into the Implementation of Safeguards in the Import of Certain Iron or Steel Products by the Indonesian Government, scrutinizing it through the lens of the Protection Agreement. This study examines the protection of the domestic industry from injustice based on Article 2.1 of the Safeguard Agreement and Government Regulation No. 34/2001. Secondly, in study Purnamasari (2021), identifies that the European Union Commission recognizes subsidies such as grants, tax incentives, and discounts on Indonesian biodiesel raw materials, contradicting Article 3 of the SCM as these subsidies are prohibited. Financial assistance is directed toward the export of Indonesian biodiesel, thus rendering the implementation of subsidies in Indonesia incongruent with SCM regulations. Third, Simangunsong (2022) elucidates, the impact of subsidized tariffs on Indonesia's shrimp exports to the United States. The Countervailing Duty has a negative impact on shrimp imports from Indonesia and examines in the final determination indeed prove that the subsidy rate decides the negative results of Countervailing Duty on shrimp exports Indonesia. Fourthly, Haddad et al., (2022) expound that the ban on nickel ore exports qualifies as a primary qualification in the analysis under the scope of Article XI:1 of the GATT. Indonesia enacts regulations that impact and restrict nickel ore exports.

While bearing resemblances to antecedent inquiries, this investigation diverges through its nuanced scrutiny of allegations and endeavors to contravene subsidies undertaken by Indonesia vis-à-vis the United States and the European Union. It accentuates a specialized focus on Indonesia's systematic endeavors to counter accusations involving subsidies, Anti-Dumping, and Safeguards, selectively centering on subsidized entities such as shrimp, biodiesel, and nickel ore. In contrast to antecedent research endeavors, which predominantly concentrated on the Agreement on Subsidies and Countervailing Measures, this study adopts a more comprehensive approach. It extends its analysis beyond the confines of Indonesian legal frameworks, delving into the intricacies of GATT and WTO regulations. By concurrently investigating both Indonesian positive law and international regulations governing subsidies, anti-dumping measures, and safeguards, this study offers a multifaceted examination of the legal landscape surrounding these economic considerations.

Indonesia, as an emerging nation, is inextricably entwined with the vicissitudes of international trade conflicts, whose intersection with multifaceted challenges is an ever-present prospect. Given the recurrence of subsidy-related disputes within Indonesia's historical context, a proactive stance is imperative to navigate the associated risks. This research endeavors to scrutinize the allegations levied by the United States and the European Union concerning subsidy transgressions committed by Indonesia, with a particular focus on elucidating the mitigation strategies undertaken by the nation to address such accusations.

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

Methodology

This study employs normative legal research through a dual methodology of statutory regulations and case analysis. Focused on legal issues concerning subsidies in Indonesia under GATT and WTO regulations, the research relies on secondary data from Government Regulation No. 34 of 2011 and the "Subsidy Code." Utilizing library research, document studies, and case studies, the data is analyzed through categorization, classification, tabulation, and interpretation. The goal is to succinctly present insights into statutory regulations and cases involving subsidies and dumping allegations against Indonesia.

Results and Discussion

Subsidy in Indonesian Instruments

The inception of the WTO signifies a concerted global effort to enhance competitiveness within the realm of international trade. The primary objective is to address instances of inequitable practices, such as the provision of export subsidies and the strategic undervaluation of products to secure market dominance. In grappling with the intricacies of these multifaceted concerns, the WTO endeavors to delineate the parameters of fairness and unfairness, establishing a framework of rules that govern such nuances. Moreover, these rules seek to prescribe appropriate governmental responses, notably through the imposition of supplementary import duties meticulously calibrated to redress the harm inflicted by the pernicious effects of unfair trade practices (Aprita & Adhitya, 2020). The presence of the WTO serves to actualize the essential regulations required in every facet of the global trading arena. Law emerges as an organizational framework for human conduct, wherein the rules themselves constitute a system of norms (Sari, 2022).

In Indonesia, subsidies find their legal basis in Law Number 7 of 1994, which pertains to the ratification of the "Agreement Establishing the World Trade Organization." Envisioned as a catalyst for economic development, particularly within the realms of industry, agriculture, and commerce, this legislation stands as a pivotal support mechanism for Indonesia's endeavors to advance its foreign trade interests (Hadad et al., 2020). Anchored in the tenets of the WTO, Indonesia aspires to engender a paradigm shift in the dynamics of international trade (Hermawan et al., 2011). WTO membership entails a binding framework of rights and obligations, concurrently presenting a spectrum of opportunities and challenges (Sood, 2019). Among the salient opportunities is the provision of safeguards against potential trade injustices and policy discrimination, affording the nation a shield against unwarranted external pressures. However, concomitant with these advantages, the WTO introduces potential threats, notably the prospect of foreign enterprises exerting significant influence over Indonesia's pivotal trade sectors (Redaksi OCBC NISP, 2023).

The regulation governing subsidies in Indonesia is intricately delineated by Government Regulation Number 34 of 2011 on Anti-dumping Duties and Compulsory Import Duties (GR 34/2011). Subsequently, the establishment of the Indonesian Anti-

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Volume 14, Issue 2, 2023, pp. 252-271
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Dumping Commission (KADI) transpired pursuant to the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 136/MPP/Kep/6/1996. Within the statutory framework of GR 34/2011, as elucidated in Article 1 point 5, subsidies are defined as: (1) Financial assistance extended by the Government or its agencies, whether direct or indirect, to companies, industries, industrial groups, or exporters; or (2) Any form of support for income or prices, whether provided directly or indirectly, designed to amplify exports or curtail imports to or from the pertinent country, thereby conferring advantages upon the recipients.

Decree No. 216/MPP/Kep/7/2001, issued by the Minister of Industry and Trade, meticulously governs the procedural intricacies and requisites entailed in the solicitation for investigations into dumped goods and goods benefiting from subsidies—a domain firmly entrenched within formal legal structures. Complementary to this, the establishment and regulatory framework of the Anti-Dumping Committee of Indonesia (KADI) find detailed elucidation in the Minister of Industry and Trade's Decree No. 427/MPP/Kep/10/2000. Adding another layer to the legal tapestry, Minister of Finance Regulation No. 55/PMK.04/2015 meticulously outlines the procedural intricacies involved in the collection and reimbursement of import duties within the purview of anti-dumping measures, compensatory measures, and trade security measures (Yustiawan, 2018).

Indonesian export producers facing allegations of engaging in unfair trade practices within their export destination countries will benefit from safeguard and advocacy measures provided by KADI. The regulatory framework, as outlined in Minister of Trade Regulation Number 33/M-DAG/PER/6/2014, delineates KADI's responsibilities in meticulously establishing the veracity of claims involving dumping or subsidy infractions. This involves a comprehensive inquiry into the accuracy of the accusations, the extent of losses incurred by the aggrieved party, and the causal nexus between the alleged dumping or subsidies and the resultant losses. KADI's mandate further encompasses the systematic collection, scrutiny, and processing of evidence and information germane to the investigation. Ultimately, KADI is entrusted with formulating recommendations for the imposition of Customs Duty: Anti-Dumping Entry and Compulsory Import Duty, which are then submitted to the Minister of Trade for consideration.

International Frameworks on Subsidies

The stipulations delineated within the World Trade Organization (WTO), particularly GATT 1947 Article XIX, and the subsequent iterations embodied in GATT 1994 Article 6, The Anti-Dumping Agreement, and Safeguard Measures GATT 1947 Article 19, along with the Subsidies Code under the Agreement on Interpretation and Application of Article VI, XVI, and XXIII, articulate explicit legal principles while concurrently accommodating specified exceptions. The tripartite focal points encompass: (i) regulatory frameworks addressing the phenomenon of dumping, characterized by the unjustifiably deflated pricing practices; (ii) the intricate domain of subsidies,

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

incorporating compensatory measures to rectify the subsidization imbalances, commonly referred to as countervailing measures; and (iii) emergency provisions that temporarily curtail imports with the aim of safeguarding the domestic industry, colloquially known as safeguard measures (Syofyan, 2013).

The inception of the multifaceted realm of multilateral subsidy regulation finds its origins in Paragraph 1 of Article XVI of the General Agreement on Tariffs and Trade (GATT), a provision derived from the Havana Charter of the International Trade Organization (ITO) (Manika, 2020). Subsequent to this foundational articulation, the initial augmentation of regulatory provisions occurred during the 1955 GATT Review Session, manifesting in the incorporation of Part B into Article XVI, denominated as "Additional Provisions on Export Subsidies." Part B is notably dedicated to addressing the potential distortive ramifications on international trade arising from specific subsidies, particularly export subsidies, as delineated in its inaugural clause (Article XVI:2):

> "The parties to the contract acknowledge that the granting of subsidies by the parties to the contract for the export of a product may have adverse consequences for the other contracting parties, both importers and exporters, may cause undue interference with their normal commercial interests, and may hinder the achievement of purposes of this Agreement [GATT]" (World Trade Report., 2023b).

During the Tokyo Round epoch, a mere 24 nations actively engaged in the subsidy agreement discussions, which culminated in the establishment of the Subsidies and Countervailing Duty Code of 1979, commonly denoted as the "Subsidies Code." This legal framework encapsulates the accord pertaining to the elucidation and application of Articles VI, XVI, and XXXIII of the General Agreement on Tariffs and Trade (GATT) and officially took effect on January 1, 1980. The Code, underpinned by a commitment to ethical standards, endeavors to achieve its objectives through the imposition of counterbalancing fees and the regulation of subsidies. The Subsidies Code not only articulates principles related to adverse effects but also delineates specific and disparate treatment conditions tailored for developing nations. A distinctive feature of the Subsidies Code lies in its meticulously detailed dispute resolution mechanisms (Manika, 2020). The advanced stipulations of the Tokyo Round SCM Agreement have led developed nations to acknowledge the proscription of export subsidies, a departure from the parameters set by Article III of the 1947 GATT (World Trade Organization, 2023). Of paramount significance is the novel accord's extension of obligations to developing country Members, subjecting them to predetermined transitional rules that govern special and differential treatment.

In elucidation of the provisions encapsulated within the Uruguay Round Agreements Act of 1994 pertaining to the ongoing scrutiny of the WTO's functionality vis-à-vis Subsidies and Balancing Measures, with particular emphasis on three salient domains. These tripartite foci are intricately woven into an evaluative framework

Article History
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Volume 14, Issue 2, 2023, pp. 252-271
P-ISSN: 1412-6834
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aimed at gauging the efficacy of the Subsidy Agreement in: 1) instilling discipline in the utilization of subsidies proscribed by the Treaty; 2) mitigating the deleterious impacts of actionable subsidies, notably through specific stipulations within the agreement that institute a rebuttable presumption of adverse trade effects in instances where certain types of subsidies are dispensed; and 3) safeguarding against the encroachment of provisions governing certain non-actionable subsidies that may compromise the benefits derived from other facets of the Subsidy Agreement (WTO Subsidies Agreement, 1999). The normative guidelines stipulated in the Uruguay Round Agreement predominantly assume a procedural character, encompassing aspects such as the delineation of investigative prerequisites, the computation of subsidy margin values, the presence or imminent risk of harm, and the establishment of a causal nexus between subsidies and their impact on the domestic industry. The redress of prohibited subsidy transgressions is effectuated through dispute resolution mechanisms within the purview of the WTO (World Trade Organization, 2023a).

Following the Uruguay Round, developing countries were accorded special and different treatment regarding prohibited subsidies under Annex VII(b) of the SCM Agreement. Article 3.1(a) of the SCM Agreement outlines a principle prohibiting export subsidies. Pursuant to Article 27.2(a) in conjunction with Annex VII of the SCM Agreement, this prohibition does not apply to two groups of developing countries: (a) the least developed countries (LDCs) as designated by the United Nations (UN); and (b) other low-income countries listed in Annex VII(b) until their gross national income (GNI) per capita reaches $1,000 per year (Annex VII(b) countries). Developing countries have a transition period of 5 years to phase out 'local content' subsidies gradually [Article 27.3]. During this transition period, the relevant dispute settlement provisions are those related to actionable subsidies (Article 7) rather than provisions related to prohibited subsidies (Article 4). Developing country members that have achieved export competitiveness for specific products have a 2-year period to eliminate export subsidies on those products. To mitigate the risk of subsidy wars, claims regarding actionable subsidies may be allowed under the provisions of Article 27.9. Opposition to export subsidies can be raised not only in the event of harm to another country but also in four specified situations outlined in Article 6.1 if serious prejudice can be demonstrated (Coppens, 2013).

United States dan European Union Subsidy Allegations Against Indonesia

1. Indonesia Confronts U.S. Allegations of Shrimp Subsidy Practices

In 2012, Indonesia faced allegations concerning the provision of subsidies for frozen shrimp exported to the United States, purportedly resulting in the competitive advantage of Indonesian shrimp products over their U.S. counterparts. The aggrieved parties were domestic shrimp producers in the United States, collectively represented by the Coalition of Gulf Shrimp Industries (COGSI). Through a combination of meticulous investigations and adept trade diplomacy initiatives, the Indonesian Government successfully refuted these subsidy allegations, substantiating the

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

absence of such financial support for its shrimp products. It is noteworthy that Indonesia, classified as a developing country, falls under the purview of WTO Article 27.10 of the SCM Agreement, which mandates the cessation of investigations into subsidy claims affecting developing nations if the aggregate subsidy level remains below 2% (Simangunsong, 2022).

2. European Union Accuses Indonesia of Subsidizing Nickel Ore Production

On January 14, 2021, the EU initiated legal proceedings against Indonesia, challenging its policy restricting the export of nickel ore below a 1.7% grade. The crux of the EU's contention lies in the alleged contravention of Article XI:1 of the GATT 1994, which unequivocally prohibits WTO member states from imposing constraints beyond tariffs, taxes, and related levies. Notably, Article XI:1 of the GATT 1994 expressly precludes any limitations, including quotas and licensing, within the purview of importation or exportation. Furthermore, the European Union contends that Indonesia, through Minister of Finance Regulation (PMK) Number 76 of 2012 and PMK Number 105 of 2016, has engaged in a prohibited subsidy regime. This subsidy mechanism, the EU argues, takes the form of duty exemptions for (i) enterprises undertaking modernization or establishing new facilities and (ii) entities explicitly encompassed within the Industrial Development Area (WPI) potential I. The subsidization framework involves the waiver of import duties on machinery, commodities, and materials integral to industrial production, with a stipulated timeframe of two years, extendable by an additional year (Mawla Robbi, 2021). In the wake of the WTO Dispute Settlement Body's (DSB) ruling in October 2022, which declared Indonesia as the unsuccessful party in the initial litigation, the Indonesian Government, in 2022, lodged an appeal with the WTO. This appellate process is presently ongoing (Muliawati, 2023).

3. United States Subsidies Allegations of Biodiesel Against Indonesia

In 2017, allegations surfaced implicating the Indonesian Government in the implementation of a dumping strategy and the subsidization of biodiesel products originating from Indonesia, as asserted by the United States. Preceding these accusations, the United States National Biodiesel advanced an anti-dumping and anti-subsidy petition targeting Indonesian biodiesel. This petition poses a substantial threat to Indonesia's biodiesel exports to the United States, as it entails the imposition of elevated tariff rates. Beyond the dumping allegations, the country's biodiesel products face accusations of benefiting from tax relief, ostensibly provided by the preceding administration, ostensibly for the palm oil industrial sector. Notably, this tax allowance was granted despite the palm oil industrial domain being the property of PT Wilmar Nabati Indonesia. Furthermore, in the same year, Europe implemented elevated import duty rates. Consequently, enterprises find themselves constrained to cater to the demands of European and American markets solely upon fulfillment of contractual obligations (Tempo, 2020).

4. European Union Subsidies Allegations of Biodiesel Against Indonesia

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271
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In a distinct legal matter involving biodiesel trade between Indonesia and the European Union, the latter implemented an Anti-Subsidy Import Duty (BMAS) ranging from 8% to 18% on Indonesian biodiesel. This regulatory measure, enacted on September 6, 2019, and definitively established as of January 4, 2020, is endowed with a five-year validity period. The rationale behind this imposition lies in the European Union's skepticism regarding the utilization of resources from the Palm Oil Plantation Fund Management Agency (BPDP-KS) and loans from state-owned banks, which they perceive as constituting a form of subsidy. Concurrently, the European Union Commission has undertaken a comprehensive inquiry into the alleged subsidization of Indonesian biodiesel. The investigation revealed that Indonesian producers derive advantages from subsidies, preferential tax treatment, and procurement of raw materials at prices below prevailing market rates. Consequently, based on these findings, the European Union Commission formally levied an Anti-Subsidy import duty ranging from 8% to 18% on biodiesel originating from Indonesia (Purnamasari, 2021).

Counteractions by Indonesia to Dispute Allegations of Subsidy Infractions

In the realm of dispute resolution within the WTO, two distinct modalities exist: first, the amicable resolution of disputes, particularly emphasized during the bilateral consultation phase; and second, the adjudicative process, encompassing the convening of panels and the issuance of reports by the Appellate Body. This framework entails three primary stages for the resolution of disputes at the WTO: 1) initial consultations between involved parties; 2) adjudication by either the Panel or the Appellate Body; and 3) the enforcement of the resultant decision, which may involve the imposition of countermeasures in the event of non-compliance. The procedural guidelines governing dispute resolution among nations are delineated in Articles 22 and 23. Notably, Article 22 mandates that disputing parties undertake bilateral consultations to address their disputes, with the provision that such consultations may be initiated by either party (Sukatma, 2016).

The dispute resolution mechanisms within the GATT and the WTO pertaining to international economic law can be delineated into two distinct modalities—non-judicial and judicial. Non-judicial avenues encompass negotiation, mediation, the role of a good officer (comprising dispute resolution facilities facilitated by impartial third parties), and conciliation. Conversely, the judicial route involves arbitration or adjudication, the latter being a tribunal-oriented approach (Puspita, 2018). A critical consideration in both judicial and non-judicial resolutions lies in the identification of legal subjects, i.e., the disputing parties involved in the mechanism. Notably, in WTO dispute settlement proceedings, access is restricted solely to its member states, precluding non-members, international entities, corporations, non-governmental organizations, and individuals from invoking the WTO dispute resolution system (Van den Bossche et al., 2010).

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

In the aforementioned legal context, wherein an undue escalation in competitiveness transpired owing to subsidies, the consequential outcome was the infliction of losses upon or the imminent threat of losses to the domestic industry as a consequence of government subsidies amid an economic downturn. Substantiated by determinations rendered by the DSB at the WTO, member nations implicated in the proscribed subsidy practices aforementioned are obligated to expeditiously rescind their subsidy regulations. Non-compliance with this mandate empowers aggrieved nations to invoke countervailing measures, given the potential detriment posed to their respective domestic industries (Barutu, 2017).

In instances of discord between Indonesia and the United States, the resolution undertaken by the two nations was of a bilateral nature, with the matter yet to progress to the adjudicative phase within the framework of the DSB. The ongoing dispute pertaining to the subsidization of shrimp remains amenable to bilateral resolution. In accordance with the subsidy regulations delineated by the WTO, any member state, including Indonesia, possesses the prerogative to level accusations encompassing subsidies, dumping, and safeguards against exporting nations or entities. Nevertheless, Article XXII of the 1994 GATT mandates the involved parties to engage in bilateral consultations as the primary avenue for resolving disputes. Both Indonesia and the United States are obliged to afford 'sympathetic consideration' to any disputes arising from the implementation of GATT across a spectrum of matters. Following investigations and concerted trade diplomacy efforts, Indonesia has conclusively substantiated that its shrimp products stand exonerated from allegations of subsidies (Pazli, 2014).

In the context of the constraints associated with Indonesian nickel in relation to the EU, the substantiation of claims in a legal proceeding necessitates the EU to undertake the onus of establishing an illicit subsidy scheme pursuant to Article 3.1(b) of the SCM Agreement. A compelling obligation exists for the European Union to demonstrate that PMK Number 76 of 2012 and PMK Number 105 of 2016 satisfy the requisite criteria for causing harm to other member nations of the WTO, as delineated in the Appellate Body's pronouncement in the case involving tax incentives between the US and the EU (Mawla Robbi, 2021). The parity in the burden of proof is manifest, with the United States marshaling evidence through its legislative measures, comprising seven specific actions aimed at counteracting aerospace tax incentives on both domestically produced and imported goods. In this regard, the US seeks to establish the congruence of its actions with its obligations under the SCM Agreement, thereby rebuffing or contesting the European Union's allegations.

Conversely, the EU buttresses its claim concerning the impermissibility of the United States' aerospace tax measures as a prohibited subsidy contingent upon the domestic utilization of imported goods within the purview of Article 3.1(b) of the SCM Agreement. Europe is obliged to substantiate the contention that the United States has deviated from the provisions outlined in Articles 1 and 2 of the SCM Agreement.

Article History
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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271
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Furthermore, the EU posits that the aforementioned tax measures constitute a prohibited subsidy, not only pursuant to Articles 3.1(b) and 3.2 of the SCM Agreement, but also asserts that the actions of the US have resulted in harm to the EU. Ultimately, the culmination of this legal dispute at the WTO sees the EU emerge victorious in the lawsuit (World Trade Organization, 2016).

In the context of dispute resolution within the framework of the WTO, Indonesia diverges from the US in its obligation to substantiate non-compliance with seven proscribed subsidy practices. In the ongoing dispute between Indonesia and the EU, Indonesia enjoys a more advantageous position, given that the onus of proof predominantly rests with the EU. As the defendant, Indonesia is mandated to furnish compelling evidence and cogent arguments to rebut the allegations regarding incongruities in nickel ore export restrictions. This obligation arises from the overarching commitment Indonesia has undertaken as a member state of the WTO (Robbi, 2021).

Decisions rendered by the DSB necessitate consensus, employing a mechanism of either reverse consensus or negative consensus. This implies that the DSB is considered to have made a decision if no consensus is reached on the matter. Put differently, the establishment of panels and the endorsement of panel reports occur automatically unless all members of the WTO raise objections. This negative consensus paradigm replaces the erstwhile positive consensus system, aiming to forestall delays in the dispute resolution process resulting from the refusal of a member country, thereby preventing the impasse in dispute settlement. Automatic adoption of the report takes place if a member expresses the desire to adopt it. Additionally, parties on the losing end with grievances have the avenue to file an appeal—a legal recourse that was non-existent during the GATT era, preceding the establishment of the WTO, where no known legal remedies for appeal existed. The procedural framework governing dispute resolution at the DSB unfolds in multiple stages: Consultation, Panel Process, Appeal Process, Adoption, and Implementation Supervision, thereby encompassing a comprehensive and structured legal progression.

The allegation brought forth by the EU is construed as a precise transgression of the SCM Agreement pertaining to the nickel commodity encompassed within a prospective Industrial Development Area (WPI). Article 1.1 of the SCM Agreement unequivocally delineates that provisions governing subsidized trade and subsidies exclusively pertain to subsidies of a 'specific' nature, namely those conferred upon an individual company, industry, or a consortium of companies or industrial entities. Subsidies of a broad nature are explicitly deemed non-'specific' and consequently fall outside the purview of the SCM Agreement (Van den Bossche et al., 2010).

In the context of allegations leveled by the EU against Indonesia pertaining to subsidies for biodiesel, particularly in connection with the Anti-Dumping Import Duty

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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

(BMAD) applicable to biodiesel, Indonesia proffers counterarguments disputing the EU's claims. Indonesia asserts that the EU has erred and violated proper procedures by neglecting to incorporate data submitted by Indonesian exporters in the computation of biodiesel production costs. Moreover, Indonesia contends that the EU has disregarded the data provided by Indonesia in establishing the foundation for calculating the dumping margin based on the average value. Furthermore, the EU has imposed an excessively elevated profit threshold for the Indonesian biodiesel sector, posing a deleterious impact on Indonesia. The EU stands accused of transgressing by employing a calculation methodology incongruent with prevailing export prices. Another infraction lies in the EU levying taxes exceeding the dumping margin, with an inability to substantiate that biodiesel imports from Indonesia detrimentally affect the pricing of domestically sold biodiesel (Lembaga Sertifikasi, 2017).

The contention raised by the US against Indonesia's subsidization of palm oil biodiesel necessitates substantiation through empirical data. Empirical evidence serves as the litmus test for the veracity of these accusations and serves to ascertain the equity of the US' biodiesel policy within the biodiesel industry. Should it be determined that the United States indeed extends subsidies to its biodiesel sector, the Anti-Dumping policy under scrutiny in Indonesia would, by principles delineated by the WTO, amount to an unfair trade practice (PASPI Research Team, 2018). The foundational tenets of WTO principles encompass: (i) the imperative of equal treatment for all members, denoting non-discrimination; (ii) the obligation of tariff binding, signifying refraining from arbitrary alterations or escalations in import duty rates; (iii) the prescription of national treatment, mandating uniform treatment without favoritism to safeguard domestic products; (iv) the restriction of protective measures exclusively to tariffs, stipulating that support for domestic industries must solely manifest through tariffs, eschewing quotas and import permits; and (v) the provision for special and differential treatment for developing nations, underscoring the imperative for developed countries to acknowledge the imperative for developing nations to enhance their participation in global trade (Barutu, 2017).

The legal contest between Indonesia and the EU concerning biodiesel has reverberations as of 2019. Commencing January 2020, the EU has formally instituted import duties on Indonesian biodiesel commodities, featuring variable rates, slated to endure for a quinquennium. The EU Commission explicates this measure as a retaliatory action against subsidies conferred upon palm oil producers in Indonesia. The EU contends that the subsidized pricing of biodiesel emanating from Indonesia has detrimentally affected producers within its jurisdiction, precipitating this responsive tariff imposition (Direktorat Jenderal Perundingan Perdagangan Internasional, 2019).

While Indonesia exclusively procures loans from state-owned banks, characterizing such financial transactions as governmental subsidies is unwarranted, given that the loans in question are strictly of a business-to-business nature. This classification is

Article History
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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271
P-ISSN: 1412-6834
E-ISSN: 2550-0090

grounded in Indonesia's meticulous adherence to the stipulations articulated in Article 1(1) of the SCM Agreement. According to this provision, subsidies manifest as financial contributions extended by the government, government agencies, or private entities designated by the government, involving direct disbursement of funds—comprising grants, loans, and equity—along with the potential for direct transfers and obligations, such as debt guarantees. Moreover, subsidies encompass government revenues that ought to have been collected but are either written off or remain uncollected, exemplified by fiscal incentives like tax breaks. Additionally, the provision of goods by the government, whether in the form of public infrastructure, procurement of goods, or payments made by the government through funding mechanisms, qualifies as subsidies. This expansive definition underscores that all forms of income and gratuitous assistance assume the status of subsidies if their implementation yields a discernible economic advantage.

Indonesia's resistance against the imposition of elevated import duties and tax rates by the US and the EU entails the pursuit of remedies through the WTO, invoking a multilateral approach in lieu of unilateral measures. This necessitates adherence to established procedures and deference to the determinations made therein. The responsibility for dispute resolution lies squarely with the DSB. Notably, appeals are not intended to reevaluate extant or emerging evidence but rather to assess the arguments proffered by the preceding panel. Each appeal undergoes meticulous scrutiny by three out of the seven permanent members of the Appellate Body, who are appointed by the DSB and hail from diverse WTO member nations. Appellate Body members, serving a four-year term, must possess a distinguished reputation in law and international trade, maintaining independence from the interests of any particular country. Decisions rendered at the appellate level hold the authority to suspend, modify, or overturn legal findings and determinations made by the initial panel (Putra, 2022). The exclusive prerogative of forming a Panel of experts tasked with examining cases resides with the DSB. Culminating the dispute-resolution process, the implementation of decisions and recommendations marks the conclusive stage of this intricate legal undertaking (Fairuz et al., 2021).

Fundamentally, Article 8.19 of the DSU underscores that, in the event of a dispute involving a developing country, said country retains the prerogative to request the inclusion of at least one panel member hailing from a developing nation. Article 12.11 mandates that the panel's report take into account the circumstances of developing countries, acknowledging that the WTO Agreement incorporates provisions affording distinctive rights to such nations, designated as a "differential and more favorable treatment" provision. Article 21.8 stipulates that when the DSB deliberates, it must duly consider both the trade dimension and the ramifications on the economic system of the concerned country. The WTO, in consonance with Article 27.2, is empowered to furnish technical assistance, including legal counsel, to developing countries. Furthermore, Article 24.1 imposes limitations on the utilization of DSU measures against countries falling within the lowest per capita gross national product spectrum

P-ISSN: 1412-6834
E-ISSN: 2550-0090

JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271

or categorized as low-income nations, particularly concerning compensation, as well as petitions for the suspension of concessions and other obligations (Sitanggang, 2017).

In the realm of Indonesian jurisprudence, particularly within the ambit of dispute resolution, it is noteworthy that not all cases find explicit regulation within the SCM Agreement. In instances where resolution is achieved, the government is compelled to address such lacunae by invoking Anti-Subsidies measures, typically manifested through the imposition of Compulsory Import Duties (BMI) or Countervailing Duties (CVD). The legal framework for this recourse is articulated in Article VI, which governs Anti-dumping and Countermeasures, stipulating that corrective action may only be taken when demonstrable harm befalls the domestic industry. A requisite causal nexus between subsidized imports and adverse economic consequences must be established. The contemporary legal and economic landscape is pervasively influenced by the tenets of utilitarianism, as espoused by Jeremy Bentham (Fuady, 2005). Rooted in the principle that human behavior is driven by the pursuit of maximal happiness and the mitigation of suffering, Bentham's utilitarian philosophy is integrally applied to the realm of law. Analogously, in the formulation of a nation's policies, laws that engender the greatest happiness for the majority of society are adjudged as virtuous and efficacious (Sucipto, 2017).

Indonesia must elucidate its stance invoking Article 20 of the 1994 GATT, which posits constraints on the WTO from undertaking measures against its members that would impede trade. Article 20 of the GATT permits WTO members to curtail trade for various societal objectives, encompassing environmental protection, prevention of prison labor, and the advancement of public morals (Jarvis, 2000). Within the environmental preservation ambit, Article 20(g) stipulates that WTO member nations can implement extraordinary measures "relating to the conservation of exhaustible natural resources," provided such measures are efficaciously synchronized with limitations on domestic production or consumption. This provision assumes significance for WTO member countries as it authorizes legitimate policies directed at conserving non-renewable natural resources. Noteworthy in the context of Article 20(g) is the requirement that exceptional measures be "primarily aimed at" conserving non-renewable natural resources, thereby necessitating a substantial nexus between the means employed and the conservation objectives sought (Muslimah & Latifah, 2022).

Article 20 (i) of the GATT delineates exceptions that elucidate the imperative nature of curbing the export of domestic materials to ensure an ample supply of essential commodities for domestic processing enterprises when domestic prices persist below international benchmarks. This restriction, as mandated by Article 20 (i), is designed to uphold the principle of non-discrimination and is not intended to bolster exports or safeguard domestic industry. Indonesia is compelled to articulate a compelling defense at the DSB in response to the limitation imposed on nickel ore exports. Failure

Article History
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JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 252-271
P-ISSN: 1412-6834
E-ISSN: 2550-0090

to address this restriction, which carries an imminent risk of depletion within an abbreviated timeframe of eight years absent further exploration, threatens to impede governmental exploration endeavors. Sustaining nickel ore exports in the absence of commensurate exploration hampers the government's ability to meet domestic industry needs by hindering the requisite valuation of domestic nickel ore and complicating the accessibility of supplies (Nursyabani & Irawati, 2023).

An additional contention buttresses the rationale behind the Indonesian government's prohibition or restriction of nickel exports containing less than 1.7%, stipulating that such exports are permissible only subsequent to processing and refining through a smelter, once the nickel content exceeds the aforementioned threshold. This policy is uniformly applicable to all international trade partners engaging in nickel importation, encompassing not only the European Union but also all entities importing nickel into Indonesia. This approach is designed to ensure consistency with the most favored nation treatment principle, averting any semblance of discriminatory practices in the global trade milieu (Azis & Abrianti, 2021).

The endeavors of the Indonesian government may be construed as engendering domestic advantages within the jurisprudential framework. Utilitarianism, as a guiding principle, posits the maximization of benefits as the paramount objective of law, where "benefit" is construed as happiness. In this context, the efficacy of a law is not contingent upon its inherent goodness or fairness but hinges on the discourse surrounding its capacity to bestow happiness upon individuals. To actualize both individual and communal happiness, legislative measures must concurrently address four imperatives: a) ensuring subsistence; b) facilitating abundance; c) fortifying security; and d) fostering equity (Kamarusdiana, 2018).

The impact of global dynamics and changes, arising from the evolving consciousness of the law, serves as a catalyst for a heightened awareness of national identity. In essence, the government is not the owner or ruler of the state, but rather, it functions as a servant of the people (Asyikin, 2020). The occurrences in Indonesia, encapsulated within legal actions, are undertaken with the overarching objective of fostering the prosperity of its populace. Consequently, the subsidy policy enacted by the Indonesian government, as delineated in its regulations, is intrinsically aligned with the aspiration to bestow contentment upon its citizenry. Within this contextual framework, Indonesia's initiatives are driven by the imperative to rejuvenate and propel the national economy forward. The crux of analysis should not pivot on the subjective evaluation of the efficacy of formulated policies; rather, attention should be directed toward assessing the legal framework's capacity to confer happiness upon the Indonesian populace.

Conclusion

JURNAL HUKUM NOVELTY
P-ISSN: 1412-6834
E-ISSN: 2550-0090
Volume 14, Issue 2, 2023, pp. 252-271

The cases that have transpired in Indonesia represent measures aimed at achieving the prosperity and well-being of its populace. Consequently, the subsidy policy implemented by the Indonesian government through its regulatory framework is inherently linked to the desire to bestow welfare upon the citizens. This connection is rooted in the legislative provisions regarding subsidies, anti-dumping measures, and safeguards in international trade, all of which are designed to provide livelihoods, ensure abundant sustenance, offer protection, and attain equity for the populace. Indonesia's actions, situated within its position, are geared toward the revitalization and advancement of its national economy. Therefore, Indonesia's focus lies in the pursuit of maximum happiness, rendering moot any debate over the efficacy of the policies enacted. Instead, the primary emphasis is on delivering welfare to the nation. The author identifies, particularly in the context of prohibited subsidy allegations, that Indonesia consistently adheres to and abides by the SCM Agreement as stipulated in Articles XXII and XXIII of the WTO Agreement and Article XXII of the GATT Agreement. These agreements mandate disputing parties to resolve conflicts through bilateral consultations initially. The disputing parties are required to afford 'sympathetic consideration' to any dispute concerning the implementation of the GATT. Indonesia's efforts to address the US' allegations of subsidies for Indonesian shrimp exports were resolved through bilateral consultations, involving the presentation of evidence from Indonesia's investigative findings to demonstrate the absence of shrimp subsidy practices.

Furthermore, in response to the allegations from the US and the EU regarding biodiesel, Indonesia's reaction to the imposition of these high tariffs should be conducted by adhering to the principles of the multilateral system rather than taking unilateral actions. As a developing country, Indonesia still benefits, as Article 8.19 of the DSU states that if a developing country is involved in a dispute, it can request a Panel composed of at least one member from a developing country. Article 12.11 stipulates that the Panel's report must consider the situations of developing countries regarding different and more favorable treatment. Additionally, in deciding, the DSB must consider not only the trade aspects but also their impact on the economic system of the country, including the overall economy. The WTO can provide technical assistance to Indonesia based on Article 27.2 in the form of legal advice. Therefore, Indonesia should leverage these special provisions to formulate a robust response to the US and the EU. The author also identifies the EU's accusations of nickel restrictions. Despite Indonesia being declared unsuccessful, it retains the right to appeal to the WTO. In preparing for this appeal, Indonesia must respond by providing veritable evidence refuting the EU's allegations. This involves conducting a thorough reexamination of the accusations. As the respondent, Indonesia is obligated to furnish compelling evidence and arguments to counter the accusations of non-compliance with WTO commitments regarding the imposition of export restrictions on nickel ore. The rebuttal is articulated by reinforcing research-based evidence and rationales, emphasizing the protection of both national and global interests to safeguard against

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the depletion of Indonesia's natural resources. Consequently, Indonesia must steadfastly uphold its policy, bolstering its arguments based on the right to impose restrictions within the GATT 1994. This is essential for securing and preventing the depletion of Indonesia's potentially endangered and non-renewable natural resources.

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Volume 14, Issue 2, 2023, pp. 252-271

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